

***RULES REGULATING ADMISSION TO
PRACTICE LAW IN CALIFORNIA
PROPOSED RULE XVII,***

(Adopted by the Board of Governors, November 3, 2000)

RULE XVII. Testing Accommodations

Section 1. General

- (a) The Office of Admissions of The State Bar of California on behalf of the Committee administers all examinations within the Committee's purview in a nondiscriminatory manner and provides reasonable testing accommodations to those applicants with functional limitations that preclude them from demonstrating under standard testing conditions that they possess the knowledge, skills and abilities necessary to pass those examinations. Testing accommodations are granted in all cases where the applicant establishes that he or she: (a) is a qualified applicant with a disability who otherwise is eligible to take the examination; (b) that testing accommodations are necessary to address the functional limitations related to the disability; and (c) the testing accommodations being sought are reasonable and appropriate for the disability.
- (b) Applicants intending to apply for testing accommodations are encouraged to do so as far in advance as practicable of the examination they wish to take after registering with the Committee. It is recommended that law students with disabilities who intend to apply for testing accommodations during the bar examination file their applications no later than the beginning of their last year of law study to ensure that the process is timely completed before administration of the examination immediately following their graduation.
- (c) The time limits specified in this rule are solely to expedite the processing of petitions for testing accommodations. They are not jurisdictional and may be extended by the Committee for good cause. Nevertheless, the Committee and the Office of Admissions will exercise its best efforts to ensure that all petitions for testing accommodations are processed in as short of period of time as possible. Accordingly, an applicant with a disability who files a complete petition for testing accommodations by February 1 for the June administration of the First-Year Law Students' Examination, by March 1 for the July administration of the California Bar Examination, by June 1 for the October administration of the First-Year Law Students' Examination or by October 1 for the February administration of the California Bar Examination, which petition is considered complete by the Committee, may expect the Committee's best efforts for a final Committee action on the petition no later than one month before the administration of the examination for which the person has applied, unless circumstances make a final determination by that date impractical.

- (d) An application to take an examination administered by the Committee and a petition for testing accommodations are separate documents apart from one another. Filing one does not constitute the filing of the other or initiate its processing. Refunds for withdrawal of an examination application will be processed in accordance with the Committee's refund policy.
- (e) Applications for testing accommodations filed with the Committee are confidential. Reports prepared by consultants retained by the Committee to review testing accommodations applications are confidential Committee work products. However, a summary of or excerpts from a consultant's evaluation may be provided to a petitioner as provided in Section 4 of this rule.
- (f) Copies of an application for testing accommodations and supporting documentation filed with the Committee will be provided to the petitioner who filed it upon written request and payment of a reasonable copying fee established by the Committee.

Section 2. Definitions.

- (a) A person has a disability for purposes of this rule if he or she:
 - (1) Has a physical or mental impairment that substantially limits one or more of an applicant's major life activities and substantially limits an applicant's ability to demonstrate under standard testing conditions that he or she possesses the knowledge, skills and abilities tested on the examinations administered by the Committee; and
 - (2) Has a record of having such an impairment; or
 - (3) Is regarded as having such an impairment.
- (b) A physical impairment is a physiological disorder or condition or an anatomical loss affecting one or more of the body's systems.
- (c) A mental impairment is a mental or psychological disorder such as organic brain syndrome, emotional or mental illness, attention deficit/hyperactivity disorder and specific learning disabilities.
- (d) A qualified applicant with a disability is a person with a disability who with reasonable: 1) modifications to rules, policies, or practices or 2) removal of architectural, communication, or transportation barriers or 3) provision of auxiliary aids and services is capable of demonstrating that he or she possesses the knowledge, skills and abilities tested on the First-Year Law Students' Examination and the California Bar Examination.
- (e) A reasonable accommodation is an adjustment to or modification of the standard testing conditions that addresses the functional limitations related to the applicant's

disability without:

- (1) fundamentally altering the nature of the examination or the Committee's ability to determine through the examination whether the applicant possesses the necessary knowledge, skills and abilities to pass the First-Year Law Students' Examination or to pass the California Bar Examination and whether the applicant meets the essential eligibility requirements for the practice of law in California as specified in the Rules; or
- (2) imposing an undue burden on the Committee; or
- (3) compromising the security of the examination; or
- (4) compromising the validity of the examination.

Section 3. Petition For Testing Accommodations.

(a) Initial Petition

- (1) A petition for testing accommodations for the First-Year Law Students' Examination or the California Bar Examination may be filed at any time by a person with a disability after he or she has registered with the Committee as a law student or attorney applicant and before the deadline for filing a timely application for the examination the petitioner wishes to take. Petitions may not be filed later than the final filing deadline for the examination the petitioner wishes to take.
- (2) A petition for testing accommodations shall be submitted on a form supplied by the Committee and shall have attached to it:
 - (i) A completed Form A, which shall include information provided by the petitioner that describes the petitioner's disability, describes with specificity the accommodations being sought and provides an explanation of how the testing accommodations being sought address the functional limitations associated with the disability and the basis for that determination; and
 - (ii) A completed Form B, Form C, Form D and/or Form E, which must be completed by the professional signing the form and shall include information from the petitioner's treating professional that provides a professional diagnosis of a disability and describes the method utilized to diagnose the existence of the disability, including identification of tests administered during the process of diagnosing the disability or a description of the functional limitation necessitating the accommodation being sought including a description of how the nature and extent of the functional limitations were determined; and,

- (iii) A completed Form F, which shall include information from the petitioner's law school or legal education supervisor describing accommodations granted for taking examinations, if accommodations were provided during law school; and,
 - (iv) If accommodations have been granted to take a bar examination in another state, a completed Form G, which shall include information from an official in that jurisdiction describing what accommodations have been granted to take its examination.
 - (3) An application for testing accommodations will be considered complete only when all relevant forms have been received, when all information called for on the application forms has been provided and all necessary supporting documentation required by the forms has been filed with the Office of Admissions. A petition that is not complete by the final examination application deadline for the examination the petitioner wishes to take will not be processed for that examination.
- (b) Subsequent Petition
- (1) Once granted, testing accommodations are not automatically extended to future examinations if a petitioner is not successful on an examination. An applicant with a permanent disability who has taken a Committee administered examination but who was not successful on that examination and who wishes the same accommodations for a subsequent administration of the examination must petition for reasonable testing accommodations for any subsequent administration of the same examination by filing such request by the established deadlines on a form supplied by the Committee. After a period of five (5) years, an applicant may be required to update the initial petition forms with new documentation and information.
 - (2) A petition filed pursuant to subsection (b)(1) above, should be filed at the same time the petitioner files an application to take another examination, or earlier, but may not be filed later than the final deadline for filing applications for the examination the petitioner wishes to take.
 - (3) A petitioner with a temporary disability who was not successful on an examination or a petitioner with a disability who has taken an examination administered by the Committee and seeks different accommodations than those previously granted, must file an initial application in accordance with subsection (3)(a) above.
- (c) Emergency Petition
- (1) An applicant who acquires a disability after the final deadline for filing petitions for the examination he or she wishes to take may request testing

accommodations after the time prescribed in this rule if he or she promptly submits the appropriate testing accommodation petition forms and documentation and includes documentation of the emergency nature of the request and the date and circumstances under which the disability arose. Emergency petitions for testing accommodations for disabilities that existed prior to or were diagnosed before the final filing deadline will not be accepted for processing for that particular examination.

- (2) Decisions on emergency petitions will be made as quickly as practicable.
- (3) An appeal of denial or proposed modification of an emergency accommodation requests will be processed in accordance with the procedures outlined in Section 4 of this rule, unless impractical due to the scheduling of the examination. In that event, should the petitioner choose not to take the examination, he or she may petition the Committee for a refund of fees paid with his or her application to take that particular examination.

Section 4. Review of Testing Accommodation Petitions.

- (a) Petitions for testing accommodations will be reviewed by the Senior Executive, Admissions or his or her designee in accordance with guidelines established by the Committee.
- (b) Review by Senior Executive, Admissions or his or her designee.
 - (1) The Senior Executive, Admissions or his or her designee will review all properly filed and complete petitions for testing accommodations on a case-by-case basis.
 - (2) As expeditiously as possible, but no later than thirty (30) days after receipt of a correctly completed petition that is timely filed and that appears to comply with the requirements of this rule, the Senior Executive, Admissions or his or her designee shall:
 - (i) Refer the petition to a consultant retained by the Committee for review and recommendation as to the need for and reasonableness of the accommodation being sought and advise the petitioner of such referral; or
 - (ii) Request that the petitioner submit additional information and/or documentation in support of the petition; or
 - (iii) Contact the petitioner with proposed modifications of the requested accommodation; or
 - (iv) Grant the petition and inform the petitioner in writing of the

accommodation to be provided; or

- (v) Provide a status report and the reason(s) why processing of the petition has not been completed; or
 - (vi) Deny the petition and inform the petitioner in writing by certified mail, return receipt requested, of the basis for the denial and of the petitioner's right to appeal.
- (3) Within twenty (20) days of the notice of referral of a petition to a consultant retained by the Committee pursuant to subsection (i) above, the Senior Executive, Admissions or his or her designee shall advise the petitioner of the status of the petition. The petitioner may be required to submit additional documentation in support of the petition, modifications may be proposed, or the petition may be granted or denied. A summary of or excerpt from the consultant's evaluation of the petition shall accompany the notice of proposed modification or denial.
- (4) A petitioner who receives notice pursuant to subsections 2(ii) and 2(iii) above shall have thirty (30) days, or shorter if the scheduling of the examination requires an earlier deadline, to provide such additional documentation as requested or to agree with the proposed modification. As quickly as practicable but within no more than ten (10) days of receipt of the additional documentation or response from the petitioner regarding proposed modifications, the Senior Executive, Admissions or his or her designee shall either determine to refer the petition to the Committee's consultant for review, or grant or deny the petition. The petitioner shall be notified in writing of the action taken by the Senior Executive, Admissions or his or her designee. Notification of denial of the petition shall be made by certified mail, return receipt requested.
- (5) If a petitioner fails to respond to a proposed modification by the deadline established in Section (4) above, the proposed modification shall be considered accepted by the petitioner.
- (6) If a petitioner fails to provide the requested additional documentation by the deadline established in Section (4) above, the petition shall be considered withdrawn.
- (c) Request for Committee Review of the Senior Executive, Admissions' or his or her designee's determination.
- (1) A petitioner who receives an adverse determination regarding his or her petition from the Senior Executive, Admissions or his or her designee or a petitioner who does not agree with the proposed modifications of the petition may appeal that determination to the Committee. The Committee shall refer the appeal to the Committee's Subcommittee on Testing Accommodations

(Testing Accommodations Subcommittee).

- (2) The appeal must be in writing, addressed to the Committee and received in the Office of Admissions in San Francisco within ten (10) business days of the petitioner's receipt of the Senior Executive, Admissions' or his or her designee's determination, or shorter if the scheduling of the examination requires an earlier deadline. The appeal shall specify the reasons why the petitioner does not agree with the Senior Executive, Admissions' or his or her designee's determination and include any supporting documentation or evidence that the petitioner wishes the Committee to consider.
- (3) Once the appeal has been received in complete form, it may be reviewed by the Senior Executive, Admissions to determine whether any additional information or documentation has been provided that would cause him or her to reconsider his or her determination and grant the petition. If not, the appeal shall be considered by the Testing Accommodations Subcommittee in closed session without oral argument as soon as practicable, either during a regularly scheduled meeting or during a specially convened telephone or video conference call. The Testing Accommodations Subcommittee shall consider the original petition for testing accommodations and accompanying documentation, consultant's reports and recommendations (if any) and such additional information as may have been included with or attached to the request for appeal, all of which documents shall constitute the record on appeal. The Testing Accommodations Subcommittee determination shall be the determination of the Committee unless a Committee member asks for review by the Committee. In that event, the Committee shall consider the original petition for testing accommodations and accompanying documentation, consultant's reports and recommendations (if any) and such additional information as may have been included with or attached to the request for appeal.
- (4) The Committee's determination shall be forwarded to the petitioner within ten (10) business days following consideration of the matter by the Committee.
- (5) In cases where proximity of the examination affects the filing deadlines noted above, appeals filed in connection with any particular examination must be filed no later than ten (10) days before the first day of the administration of the examination the petitioner intends to take. Otherwise, an appeal may be submitted for a future examination without re-filing an initial petition for testing accommodations.

Section 5. Guidelines.

- (a) The Committee shall publish guidelines for documenting the need for testing accommodations based on learning disabilities and attention deficit/hyperactivity disorder, including testing required to establish the existence of the disability and

the reasonableness of the accommodations being sought. The guidelines are intended to assist persons with disabilities and their licensed treating professionals to understand the methodology used by the Committee to evaluate the needs for reasonable accommodations based on learning disabilities and should not be regarded as a rigid set of requirements for accommodations of such disabilities, as each petition will be evaluated on a case-by-case basis.

- (b) At its discretion, the Committee may publish guidelines for various disabilities that have been accommodated on past examinations. Publication of such guidelines, however, is not to be regarded as a rigid set of requirements for accommodations of such disabilities, as each petition will be evaluated on a case-by-case basis.